UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.5/2001/2
2 April 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-third session
Working Group on Minorities
Seventh session
14-18 May 2001

Final text of the

Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

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I. INTRODUCTION

1. In 1992, in its resolution 47/135, the United Nations General Assembly proclaimed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Assembly requested that intensified efforts be made to disseminate information on the Declaration and promote understanding thereof.

2. This commentary has been prepared in the context of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights. It is intended to serve as a guide to the understanding and application of the Declaration. The first draft, prepared by me as Chairman, was submitted to the Working Group on Minorities for discussion in 1998[1] and was subsequently circulated to Governments, intergovernmental and non-governmental organizations and individual experts for comments. A compilation of those comments was

submitted to the Working Group at its fifth session in 1999.[2] Additional comments were made during that session and at the sixth session in 2000.[3] The Working Group requested me on that basis to finalize the Declaration and to ensure its publication in the planned United Nations manual on minorities. This final text therefore draws on written work or oral contributions by many experts, Governments and international and non-governmental organizations, and thus takes into account a broad body of opinion. The ultimate responsibility for its content rests, however, with me as its main author.

II. PURPOSES OF THE DECLARATION: ADVANCING HUMAN RIGHTS AND THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS

3. The purposes of the Declaration, as set out in the General Assembly resolution 47/135 and the preamble to the Declaration, is to promote more effective implementation of the human rights of persons belonging to minorities and more generally to contribute to the realization of the principles of the Charter of the United Nations and of the human rights instruments adopted at the universal or regional level. The Declaration is inspired by article 27 of the International Covenant on Civil and Political Rights. The General Assembly holds that the promotion and protection of the rights of minorities contribute to the political and social stability of the States in which minorities live and contribute to the strengthening of friendship and cooperation among peoples and States.

4. The Declaration builds on and adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. The human rights set out in the Universal Declaration of Human Rights must at all times be respected in the process, including the principle of non-discrimination between individuals. The State is obliged to respect and ensure to every person within its territory and subject to its jurisdiction, without discrimination on any ground, including race, ethnicity, religion or national origin, the rights contained in the instruments to which that State is a party.

5. It is in the light of these purposes and principles that the articles of the Minority Declaration must be interpreted.

III. INTERPRETATION OF AND COMMENTS ON THE TITLE AND THE INDIVIDUAL ARTICLES

The title and the scope of the Declaration

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

6. The beneficiaries of the rights under article 27 of the International Covenant on Civil and Political Rights, which has inspired the Declaration, are persons belonging to "ethnic, religious or linguistic minorities". The Declaration on Minorities adds the term "national minorities". That addition does not extend the overall scope of application beyond the groups already covered by article 27. There is hardly any national minority, however defined, that is not also an ethnic

or linguistic minority. A relevant question, however, would be whether the title indicates that the Declaration covers four different categories of minorities, whose rights have somewhat different content and strength. Persons belonging to groups defined solely as religious minorities might be held to have only those special minority rights which relate to the profession and practice of their religion. Persons belonging to groups solely defined as linguistic minorities might similarly be held to have only those special minority rights which are related to education and use of their language. Persons who belong to groups defined as ethnic would have more extensive rights relating to the preservation and development of other aspects of their culture also, since ethnicity is generally defined by a broad conception of culture, including a way of life. The category of national minority would then have still stronger rights relating not only to their culture but to the preservation and development of their national identity.

7. The Declaration does not, in its substantive provisions, make such distinctions. This does not exclude the possibility that in the interpretation and application of the various provisions the needs of the different categories of minorities could be taken into account.

8. Regional European instruments on minority rights use only the concept "national minorities" and do not refer to "ethnic, religious or linguistic minorities". The most important among them are the instruments and documents of the Council of Europe[4] and the Organization for Security and Co-operation in Europe.[5] When applying those instruments it is important to define "national minority", but the same problem does not arise for the 1992 Declaration on Minorities of the United Nations: even if a group is held not to constitute a national minority, it can still be an ethnic, religious or linguistic minority and therefore be covered by the Declaration.

9. This can be important in several respects. In relation to the European regional instruments, some States argue that "national minorities" only comprise groups composed of citizens of the State. Even if that is accepted (at present it is a matter of some controversy), it would not apply to the 1992 Declaration on Minorities because it has a much wider scope than "national minorities". As the 1992 Declaration is inspired by article 27 of the International Covenant on Civil and Political Rights, it may be assumed that the Declaration has at least as wide a scope as that article. In conformity with article 2 of the Covenant, States parties are under an obligation to respect and ensure the application of article 27 to everyone within its territory and under its jurisdiction, whether the person - or group of persons - are citizens of the country or not. This is also the view expressed by the Human Rights Committee in paragraphs 5.1 and 5.2 of its General Comment No. 23 (fiftieth session, 1994). Persons who are not (yet) citizens of the country in which they reside can form part of or belong to a minority in that country.

10. While citizenship as such should not be a distinguishing criterion which excludes some persons or groups from enjoying minority rights under the Declaration, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities. Those who live compactly together in a part of the State territory may be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and may in some circumstances be entitled to some kind of autonomy. Those who have been established for a long time on the territory may have stronger rights than those who have recently arrived.

11. The best approach appears to be to avoid making an absolute distinction between "new" and "old" minorities by excluding the former and including the latter, but to recognize that in the application of the Declaration the "old" minorities have stronger entitlements than the "new".

12. The word "minority" can sometimes be misleading in itself. Outside Europe, and particularly in Africa, countries are often composed of a large number of groups, none of which make up a majority.

13. The relevant factors differ significantly between States. What is required is to ensure appropriate rights for members of all groups and to develop good governance in heterogeneous societies. By good governance is here understood legal, administrative and territorial arrangements which allow for peaceful and constructive group accommodation based on equality in dignity and rights for all and which allows for the necessary pluralism to enable the persons belonging to the different groups to preserve and develop their identity.

14. The Declaration sets out rights of persons belonging to minorities mainly in article 2 and spell out the duties of the States in which they exist in articles 1, 4 and 5. While the rights are consistently set out as rights of individuals, the duties of States are in part formulated as duties towards minorities as groups. This is most clearly expressed in article 1 (see below). While only individuals can claim the rights, the State cannot fully implement them without ensuring adequate conditions for the existence and identity of the group as a whole.

15. The rights of persons belonging to minorities differ from the rights of peoples to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights. While the right of peoples to self-determination is well established under international law, in particular by common article 1 to the two International Covenants on Human Rights, it does not apply to persons belonging to minorities. This does not exclude that persons belonging to an ethnic or national group may in some contexts legitimately make claims based on minority rights and, in another context, when acting as a group, can make claims based on the right of a people to self-determination.

16. Within the United Nations and also within the Organization of American States, a distinction is drawn between the rights of persons belonging to minorities and those of indigenous peoples. The latter have particular concerns which are not properly addressed in the Declaration on Minorities. The main instrument at the global level relating to indigenous peoples is ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which has been ratified by only a small number of States. The draft declaration on the rights of indigenous peoples, adopted by the Working Group on Indigenous Populations and transmitted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1993 to the Commission on Human Rights, is still under consideration by the Commission.

17. Persons belonging to indigenous peoples are of course fully entitled, if they so wish, to claim the rights contained in the instruments on minorities. This has repeatedly been done under article 27 of the International Covenant on Civil and Political Rights. Persons belonging to indigenous peoples have made several submissions under the first optional protocol to that Covenant.

18. That protocol does not generally make it possible to claim the group-oriented rights sought by indigenous peoples, but some modification of that point follows from General Comment No. 23 of the Human Rights Committee (fiftieth session, 1994, para. 7). The Committee noted that, especially in the case of indigenous peoples, the preservation of their use of land resources can become an essential element in the right of persons belonging to such minorities to exercise their cultural rights. Since the indigenous peoples very often have collective rights in land, individual members of the group may be in a position to make claims not only for themselves but for the indigenous group as a whole.

19. Some see a link between the right of persons belonging to minorities to effective political participation and the right of peoples to self-determination. The issue of effective participation is addressed below in the comments on articles 2.2 and 2.3. If participation is denied to a minority and its members, this might in some cases give rise to a legitimate claim to self-determination. If the group claims a right to self-determination and challenges the territorial integrity of the State, it would have to claim to be a people, and that claim would have to be based on article 1 common to the Covenants and would therefore fall outside the Declaration on Minorities. This follows also from article 8, paragraph 4 of the Declaration (see below). The same would apply in other contexts where the collective right to self-determination is claimed. The Declaration neither limits nor extends the rights to self-determination that peoples have under other parts of international law.[6]

20. While the Declaration does not provide group rights to self-determination, the duties of the State to protect the identity of minorities and to ensure their effective participation might in some cases be best implemented by arrangements for autonomy in regard to religious, linguistic or broader cultural matters. Good practices of that kind can be found in many States. The autonomy can be territorial, cultural and local, and can be more or less extensive. Such autonomy can be organized and managed by associations set up by persons belonging to minorities in accordance with article 2.4. But the Declaration does not make it a requirement for States to establish such autonomy. In some cases, positive measures of integration (but not assimilation) can best serve the protection of minorities.

Article 1

1.1 States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity

21. The relationship between the State and its minorities has in the past taken five different forms: elimination, assimilation, toleration, protection and promotion. Under present international law, elimination is clearly illegal. The Declaration is based on the consideration that forced assimilation is unacceptable. While a degree of integration is required in every

national society in order to make it possible for the State to respect and ensure human rights to every person within its territory without discrimination, the protection of minorities is intended to ensure that integration does not become unwanted assimilation or undermine the group identity of persons living on the territory of the State.

22. Integration differs from assimilation in that while it develops and maintains a common domain where equal treatment and a common rule of law prevail, it also allows for pluralism. The areas of pluralism covered by the Declaration are culture, language and religion.

23. Minority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned.

24. The protection of the existence of minorities includes their physical existence, their continued existence on the territories on which they live and their continued access to the material resources required to continue their existence on those territories. The minorities shall neither be physically excluded from the territory nor be excluded from access to the resources required for their livelihood. The right to existence in its physical sense is sustained by the Convention on the Prevention and Punishment of the Crime of Genocide, which codified customary law in 1948. Forced population transfers intended to move persons belonging to minorities away from the territory on which they live, or with that effect, would constitute serious breaches of contemporary international standards, including the Statute of the International Criminal Court. But protection of their existence goes beyond the duty not to destroy or deliberately weaken minority groups. It also requires respect for and protection of their religious and cultural heritage, essential to their group identity, including buildings and sites such as libraries, churches, mosques, temples and synagogues.

25. The second requirement is that minorities shall not be excluded from the national society. Apartheid was the extreme version of exclusion of different groups from equal participation in the national society as a whole. The Declaration on Minorities repeatedly underlines the rights of all groups, small as well as large, to participate effectively in society (arts. 2.2 and 2.3).

26. The third requirement is non-discrimination, which is a general principle of human rights law and elaborated by, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination, which also covers discrimination on ethnic grounds. The Declaration on Minorities elaborates the principle of non-discrimination in its provision that the exercise of their rights as persons belonging to minorities shall not justify any discrimination in any other field, and that no disadvantage shall result from the exercise or non-exercise of these rights (art. 3).

27. The fourth requirement is non-assimilation and its corollary, which is to protect and promote conditions for the group identity of minorities. Many recent international instruments use the term "identity", which expresses a clear trend towards the protection and promotion of cultural diversity, both internationally and internally within States. Relevant provisions are articles 29 and 30 of the Convention on the Rights of the Child, article 31 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 2 (2) (b) of ILO Convention No. 169, which refers to respect for the social and

cultural identity, customs and traditions and institutions of indigenous peoples, as well as provisions of regional instruments such as those of the Organization on Security and Co-operation in Europe, including its 1990 Copenhagen Conference on the Human Dimension and its 1991 Geneva Meeting of Experts on National Minorities. Another recent instrument in the same direction is the European Framework Convention for the Protection of National Minorities.

28. Minority group identity requires not only tolerance but a positive attitude towards cultural pluralism on the part of the State and the larger society. Not only acceptance but also respect for the distinctive characteristics and contribution of minorities to the life of the national society as a whole are required. Protection of their identity means not only that the State should abstain from policies which have the purpose or effect of assimilating minorities into the dominant culture, but also that it should protect them against activities by third parties which have an assimilatory effect. The language and educational policies of the State concerned are crucial in this regard. Denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity.

29. Promotion of the identity of minorities requires special measures to facilitate the maintenance, reproduction and further development of their culture. Cultures are not static; minorities should be given the opportunity to develop their own culture in the context of an ongoing process. That process should be an interaction between the persons belonging to the minority themselves, between the minority and the State, and between the minority and the wider national society. The measures required to achieve this purpose are set out in greater detail in article 4 of the Declaration.

1.2 States shall adopt appropriate legislative and other measures to achieve those ends

30. Article 1.2 requires "appropriate legislative and other measures". Legislation is needed and it must be complemented by other measures in order to ensure that article 1 can be effectively implemented. Both process and content is important here. In terms of process, it is essential that the State consult the minorities on what would constitute appropriate measures. This follows also from article 2.3 of the Declaration. Different minorities may have different needs that must be taken into account. Any differences in policy, however, must be based on objective and reasonable grounds in order to avoid discrimination.

31. "Other measures" include, but are not limited to, judicial, administrative, promotional and educational measures.

32. In general terms, the content of the measures which have to be adopted are set out in the other provisions of the Declaration, particularly articles 2 and 4, which will be discussed below. One set of measures stem directly from article 1.1: States must adopt laws protecting against acts or incitement to acts which physically threaten the existence of groups or threaten their

identity. This obligation also follows from the International Convention on the Elimination of All Forms of Racial Discrimination. Under article 4 of that Convention, States are required to adopt legislative measures intended to protect groups against hatred and violence on racial or ethnic grounds. A comparable obligation is contained in article 20 of the International Covenant on Civil and Political Rights.

Article 2

2.1 Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination

33. Article 27 of the International Covenant on Civil and Political Rights has almost the same language, but the Declaration is more explicit in requiring positive action. Article 27 of the Covenant, requires that persons belonging to the minorities "shall not be denied the right to ...", whereas article 2 of the Declaration of 1992 uses the positive expression "have the right to ...". Article 27 has been interpreted by the Human Rights Committee as requiring more than mere passive non-interference.[7] The Declaration on Minorities makes it clear that these rights often require action, including protective measures and encouragement of conditions for the promotion of their identity (art. 1) and specified, active measures by the State (art. 4).

34. The words "freely and without interference or any form of discrimination", at the end of article 2.1, show that it is not enough for the State to abstain from interference or discrimination. It must also ensure that individuals and organizations of the larger society do not interfere or discriminate.

2.2 Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life

35. The right to participate in all aspects of the life of the larger national society is essential, both in order for persons belonging to minorities to promote their interests and values and to create an integrated but pluralist society based on tolerance and dialogue. By their participation in all forms of public life in their country, they are able both to shape their own destinies and to contribute to political change in the larger society.

36. The words "public life" must be understood in the same broad sense as in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, though much is covered already by the preceding words "cultural, religious, social and economic". Included in "public life" are, among other rights, rights relating to election and to being elected, the holding of public office, and other political and administrative domains.

37. Participation can be ensured in many ways, including the use of minority associations (see also art. 2.4), membership in other associations, and through their free contacts both inside the State and across borders (see art. 2.5).

2.3 Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation

38. While article 2.2 deals generally with the right to participation in all aspects of the public life of a society, article 2.3 deals specifically with the right of persons belonging to minorities to effective participation "in decisions ... concerning the minority to which they belong or the regions in which they live". As such decisions have a particular impact on persons belonging to minorities, the emphasis on effective participation is here of particular importance. Representatives of persons belonging to minorities should be involved already from the initial stages of decision-making. Experience has shown that it is of little use to involve them only at the final stages where there is very little room for compromise. Minorities should be involved at the local, national and international levels in the formulation, adoption, implementation and monitoring of standards and policies affecting them.

39. In 1991, the Conference on Security and Co-operation in Europe held a Meeting of Experts on National Minorities in Geneva. The States there assembled noted approaches used with positive results in some of the participating States. These included advisory and decision-making bodies - in particular with regard to education, culture and religion - on which minorities were represented. Also mentioned were assemblies for national minority affairs; local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections. Reference was further made to forms of self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis did not apply; and decentralized or local forms of government.[8]

40. In early May 1999, a group of independent experts met in Lund, Sweden to draw up a set of recommendations on the effective participation of national minorities in public life. The recommendations are built upon fundamental principles and rules of international law, such as respect for human dignity, equal rights and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights.[9] At its fifth session, at the end of May 1999, the Working Group on Minorities of the Sub-Commission adopted a set of recommendations on the same topic.[10]

41. The following commentary draws extensively on these recommendations. The purpose is not to set out only the minimum rights under article 2.3 of persons belonging to minorities, but also to provide a list of good practices which may be of use to Governments and minorities in finding appropriate solutions to issues confronting them.

42. Effective participation provides channels for consultation between and among minorities and Governments. It can serve as a means of dispute resolution and sustain diversity as a condition for the dynamic stability of a society. The number of persons belonging to minorities is by definition too small for them to determine the outcome of decisions in majoritarian democracy. They must as a minimum have the right to have their opinions heard and fully taken

into account before decisions which concern them are adopted. A wide range of constitutional and political measures is used around the world to provide access for minorities to decision-making.

43. The variety in the composition, needs and aspirations of different types of minority groups requires identification and adoption of the most appropriate ways to create conditions for effective participation in each case. The mechanisms chosen have to take into account whether the persons belonging to the minority in question live dispersed or in compactly settled groups, whether the minority is small or large, or an old or a new minority. Religious minorities may also require different types or contexts of participation than ethnic or national minorities. It should be noted, however, that in some cases the religion and ethnicity coincide.

44. Effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. Persons belonging to minorities, like all others, are entitled to assemble and to form their associations and thereby to aggregate their interests and values to make the greatest possible impact on national and regional decision-making. They are entitled not only to set up and make use of ethnic, cultural and religious associations and societies (see commentary to article 2.4 below), but also to establish political parties, should they so wish. In a well-integrated society, however, many persons belonging to minorities often prefer to be members of or vote for parties which are not organized on ethnic lines but are sensitive to the concerns of the minorities.

45. Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation. Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities. Some forms of preference voting, where voters rank candidates in order of choice, may also facilitate minority representation and promote inter-communal cooperation.

46. Decentralization of powers based on the principle of subsidiarity, whether called self-government or devolved power, and whether the arrangements are symmetrical or asymmetrical, would increase the chances of minorities to participate in the exercise of authority over matters affecting themselves and the entire society in which they live.

47. Public institutions should not, however, be based on ethnic or religious criteria. Governments at local, regional and national levels should recognize the role of multiple identities in contributing to open communities and in establishing useful distinctions between public institutional structures and cultural identities.

48. States should also establish advisory or consultative bodies involving minorities within appropriate institutional frameworks. Such bodies or round tables should be attributed political weight and effectively consulted on issues affecting the minority population.

49. There should be equal access to public sector employment across the various ethnic, linguistic and religious communities.

50. Citizenship remains an important condition for full and effective participation. Barriers to the acquisition of citizenship for members of minorities should be reduced. Forms of participation by resident non-citizens should also be developed, including local voting rights after a certain period of residence and inclusion of elected non-citizen observers in municipal, regional and national legislative and decision-making assemblies.

2.4 Persons belonging to minorities have the right to establish and maintain their own associations

51. Persons belonging to minorities are entitled, in the same way as other members of society, to set up any association they may want,[11] including educational or religious institutions, but their right to association is not limited to concerns related to their cultural, linguistic or religious identity. The right to associate of persons belonging to minorities extends both to national and to international associations. Their right to form or join associations can be limited only by law and the limitations can only be those which apply to associations of majorities: limitations must be those necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms.

2.5 Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties

52. The right to contacts has three facets, permitting intra-minority contacts, inter-minority contacts, and transfrontier contacts. The right to intra-minority contacts is inherent in the right of association. Inter-minority contacts make it possible for persons belonging to minorities to share experience and information and to develop a common minority platform within the State. The right to transfrontier contacts constitutes the major innovation of the Declaration, and serves in part to overcome some of the negative consequences of the often unavoidable division of ethnic groups by international frontiers. Such contacts must be "free" but also "peaceful". The latter limitation has two aspects: it must not involve the use of violent means or preparation of the use of such means; secondly, the aims must be in conformity with the Declaration and generally with the purposes and principles of the Charter of the United Nations, as set out also in article 8.4 of the Declaration.

Article 3

3.1 Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination

53. The main point here is that persons can exercise their rights both individually and collectively, the most important aspect being the collective exercise of their rights, be it through associations, cultural manifestations or educational institutions, or in any other way. That they

can exercise their rights in community with other members of the group applies not only to the rights contained in the Declaration, but any human right. They shall not be subject to any discrimination as a consequence of exercising their rights. This principle is important, because Governments or persons belonging to majorities are often tolerant of persons of other national or ethnic origins until such time as the latter assert their own identity, language and traditions. It is often only when they assert their rights as persons belonging to a group that discrimination or persecution starts. Article 3.1 makes it clear that they shall not be subjected to discrimination for manifesting their group identity.

3.2 No disadvantage shall result for any person belonging to a minority as a consequence of the exercise or non-exercise of the rights set forth in the present Declaration

54. While article 3.1 provides that persons belonging to minorities shall not be subjected to discrimination for exercising, individually or collectively, their minority rights, article 3.2 makes it clear that they shall also not be disadvantaged in any way for choosing not to belong to the minority concerned. This provision is directed both towards the State and the agencies of the minority group. The State cannot impose a particular ethnic identity on a given person (which is what the apartheid regime in South Africa sought to do) by the use of negative sanctions against those who do not want to be part of that group; nor can persons belonging to minorities subject to any disadvantage persons who on objective criteria may be held to form part of their group but who subjectively do not want to belong to it. While, under conventional law, responsibility for human rights compliance normally rests with the State, the Declaration in this respect implies duties - at least morally - for persons representing minorities. Furthermore, States would be under a duty to prohibit the taking of measures by minorities to impose their particular rules on any person who did not want to be part of the minority concerned and therefore did not want to exercise her or his rights.

Article 4

4.1 States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law

55. Article 4 sets out the State measures that should be taken in order to achieve the purpose of the Declaration and is its most important part, together with article 2, which sets out the rights. While States are generally obliged under international law to ensure that all members of society may exercise their human rights, States must give particular attention to the human rights situation of persons belonging to minorities because of the special problems they confront. They are often in a vulnerable position and have, in the past, often been subjected to discrimination. In order to ensure equality in fact, it may under some circumstances be necessary for the State to take transitional affirmative action, as provided for in article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to ethnic as well as racial minorities, provided these measures do not disproportionately affect the rights of others.

4.2 States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards

56. This paragraph of article 4 calls for more than mere tolerance of the manifestation of different cultures within a State. The creation of favourable conditions requires active measures by the State. The nature of those measures depends on the situation of the minority concerned, but should be guided by the purpose set forth in article 4.2, which is twofold. On the one hand, individual members of the minority shall be enabled to express the traditional characteristics of the group, which may include a right to use their traditional attire and to make their living in their own cultural ways. On the other hand, they shall be enabled, in community with other persons belonging to the group, to develop their culture, language and traditions. These measures may require economic resources from the State. In the same way as the State provides funding for the development of the culture and language of the majority, it shall provide resources for similar activities of the minority.

57. The words "except where specific practices are in violation of national law and contrary to international standards" require some comment. The meaning of the words "contrary to international standards" is simple enough. In particular, it is intended that the practices must not be contrary to international human rights standards. This, however, should apply to practices of both majorities and minorities. Cultural or religious practices which violate human rights law should be outlawed for everyone, not only for minorities. The qualification contained in the final words of the last sentence of article 4.2 is therefore only a specific application of a universal principle applicable to everyone.

58. The first part of the sentence "in violation of national law" raises somewhat more difficult questions. It is clear that the State is not free to adopt whatever prohibitions against minorities' cultural practices that it wants. If that were the case, the Declaration and article 4.2 in particular would be nearly empty of content. What is intended, however, is to respect the margin of appreciation which any State must have regarding which practices it wants to prohibit, taking into account the particular conditions prevailing in that country. As long as the prohibitions are based on reasonable and objective grounds, they must be respected.

4.3 States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue

59. Language is among the most important carriers of group identity. In line with the general requirement in article 1 that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to learn their mother tongue (which is a minimum) or to have instruction in their mother tongue (which goes some steps further).

60. The steps required in these regards depend on a number of variable factors. Of significance will be the size of the group and the nature of its settlement, i.e. whether it lives

compactly together or is dispersed throughout the country. Also relevant will be whether it is a long-established minority or a new minority composed of recent immigrants, whether or not they have obtained citizenship.

61. In cases where the language of the minority is a territorial language traditionally spoken and used by many in a region of the country, States should to the maximum of their available resources ensure that linguistic identity can be preserved. Pre-school and primary school education should, ideally in such cases, be in the child's own language, i.e. the minority language spoken at home. Since persons belonging to minorities, like those belonging to majorities, have a duty to integrate into the wider national society, they need also to learn the official or State language(s). The official language(s) should gradually be introduced at later stages. Where there is a large linguistic minority within the country, the language of the minority is sometimes also an official language of the State concerned.

62. At the European regional level, educational rights relating to minority languages are developed at greater length in the European Charter for Regional or Minority Languages, adopted by the Council of Europe. On this subject, a group of experts elaborated the Hague Recommendations regarding the Education Rights of National Minorities (October 1996), prepared under the auspices of the Foundation on Inter-Ethnic Relations.

63. In regard to non-territorial languages spoken traditionally by a minority within a country, but which are not associated with a particular region of that country, a uniform solution is more difficult to find. The principles stated above should be applied where appropriate, but where the persons belonging to the minority live dispersed, with only a few persons in each particular place, their children need to learn the language of the surrounding environment more fully at an earlier stage. Nevertheless, they should always also have an opportunity to learn their mother tongue. In this regard, persons belonging to minorities have a right, like others, to establish their private institutions, where the minority language is the main language of instruction. However, the State is entitled to require that the State language is also taught. One question to be addressed is whether the State is obliged to provide subsidies for such teaching. It would be a requirement that the State does ensure the existence of and fund some institutions which can ensure the teaching of that minority language. It follows from the general wording of article 4.3 that everyone should have adequate opportunities "wherever possible". It would therefore depend on the resources of the State how far the obligation to fund teaching of minority languages for persons belonging to dispersed groups goes.

64. Greater difficulties arise in regard to languages used solely by persons belonging to new minorities. These are usually more dispersed than are the older and settled minorities, and the number of languages spoken at home by migrants in a country of immigration can be quite large. Furthermore, the children have a great need to learn to use the language of the country of immigration as quickly and as effectively as possible. Should, however, some new minorities settle compactly together in a region of the country and in large number, there is no reason to treat them differently from old minorities. It should be noted, however, that the European Charter for Regional or Minority Languages does not cover the languages of migrants. In any case, persons belonging to new minorities are entitled to set up their own private educational institutions allowing for the teaching of and instruction in their mother tongue. The State is entitled to demand that the official language is also taught.

4.4 States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole

65. Experience has shown that in societies where different national, ethnic, religious or linguistic groups coexist, the culture, history and traditions of minority groups have often been neglected and the majorities are frequently ignorant of those traditions and cultures. Where there has been conflict, the minority groups' culture, history and traditions have often been subject to distorted representations, resulting in low self-esteem within the groups and negative stereotypes towards members of the group on the part of the wider community. Racial hatred, xenophobia and intolerance sometimes take root.

66. To avoid such circumstances, there is a need for both multicultural and intercultural education. Multicultural education involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, while intercultural education involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.

67. Article 4.4 calls for intercultural education, by encouraging knowledge in the society as a whole of the history, tradition and culture of the minorities living there. Cultures and languages of minorities should be made accessible to the majorities as a means of encouraging interaction and conflict prevention in pluri-ethnic societies. Such knowledge should be presented in a positive way in order to encourage tolerance and respect. History textbooks are particularly important in this regard. Bias in the presentation of the history and neglect of the contributions of the minority are significant causes of ethnic tension. UNESCO has concerned itself with the need to eliminate such prejudices and misrepresentations in history textbooks, but much remains to be done.

68. This paragraph of article 4 also emphasizes the complementary duty to ensure that persons belonging to minorities gain knowledge of the society as a whole. This provision should counteract tendencies towards fundamentalist or closed religious or ethnic groups, which can be as much affected by xenophobia and intolerance as the majorities.

69. The overall purpose of article 4.4 is to ensure egalitarian integration based on non-discrimination and respect for each of the cultural, linguistic or religious groups which together form the national society. The formation of more or less involuntary ghettos where the different groups live in their own world without knowledge of, or tolerance for, persons belonging to the other parts of the national society would be a violation of the purpose and spirit of the Declaration.

70. A concern similar to that of article 4.4 is expressed in the International Convention on the Elimination of All Forms of Racial Discrimination (art. 7) and in the Convention on the Rights of the Child (art. 29).

4.5 States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country

71. There is often a risk that minorities, owing to their limited number compared to the majority and for other reasons, may be subjected to exclusion, marginalization or neglect. In the worst cases, the land and resources of minorities are taken over by the more powerful sectors of society, with consequent displacement and marginalization of persons belonging to the minorities. In other cases, persons belonging to minorities are neglected in the economic life of the society. Article 4.5 requires steps being taken to ensure that this does not happen. It should also prevent minorities being made into museum pieces by a misguided requirement that they remain at their traditional level of development while the members of the surrounding society experience significant improvements in their standard of living.

72. Article 4.5 calls for the integration of everyone in the overall economic development of society as a whole, while ensuring that this integration takes place in ways which make it possible for persons belonging to minorities to preserve their own identity. The balancing act required by these two separate aims can be difficult, but is facilitated by the existence of active and free associations of minorities which are fully consulted in regard to all development activities which affect or can affect their minority. Measures taken under article 2 to ensure participation facilitate this process.

Article 5

5.1 National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities

73. The participation of persons belonging to minorities in the economic progress and development of their country (art. 4.5) can be achieved only if their interests are taken into account in the planning and implementation of national policies and programmes. Their interests go beyond purely economic aspects, however. Planning of educational policy, health policy, public nutrition policy or housing and settlement policies are among the many aspects of social life in which the interests of the minorities should be taken into account. While the authorities are required to take only "legitimate" interests into account, this is no different from what is required in relation to majorities: an accountable Government should not promote "illegitimate interests" of any group, whether majority or minority. The interests of minorities should be given "due regard", which means that they should be given reasonable weight compared with other legitimate interests that the Government has to take into consideration.

5.2 Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities

74. This provision is of particular interest for development assistance, but relates also to other economic cooperation among States, including trade and investment agreements. There have been many instances in the past where such cooperation has neglected or directly violated

the interests of minorities. Development agencies, financial institutions and others involved in international cooperation have a dual task: firstly, to ensure that legitimate interests of minorities are not negatively affected by the measures implied in the cooperation envisaged; and secondly, to ensure that persons belonging to minorities can benefit as much as members of majorities from that cooperation. The notion of "due regard" means that proper weight should be given to the interests of the minorities, all factors taken into account. An assessment should be made of the likely impact of the cooperation on the affected minorities. This should be an integral part of any feasibility study.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia by exchanging information and experiences, in order to promote mutual understanding and confidence

75. Two sets of considerations underlie this provision. One is to share and exchange knowledge about good practices, whereby States can learn from each other. The other is to promote mutual understanding and trust. The latter is of particular importance.

76. Situations involving minorities often have international repercussions. Tensions between States have arisen in the past and in some cases continue in the present over the treatment of minorities, particularly in relations between the home State of a given minority and other States where persons belonging to the same ethnic, religious or linguistic group reside. Such tensions can affect the security of the countries involved and create a difficult political atmosphere, both internally and internationally.

77. Article 6 encourages States to cooperate in order to find constructive solutions to situations involving minorities. In accordance with the Charter of the United Nations, States should observe the principle of non-intervention in their bilateral relations. They should abstain from any use of force and also from any encouragement of the use of violence by parties to group conflicts in other States, and should take all necessary measures to prevent incursion by any armed group or mercenaries into other States in order to participate in group conflicts. On the other hand, they should, in their bilateral relations, engage in constructive cooperation to facilitate, on a reciprocal basis, the protection of equality and promotion of group identities. One approach, much used in Central and Eastern Europe, is for States to conclude bilateral treaties or other arrangements concerning good neighbourly relations based on the principles of the Charter and on international human rights law, combining commitments of strict non-intervention with provisions for cooperation in promoting conditions for the maintenance of group identities and transborder contacts by persons belonging to minorities. Provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments relating to equality, non-discrimination and minority rights. Such treaties should include provisions for the settlement of disputes regarding their implementation.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration

78. The cooperation called for in article 7 can be undertaken at the regional and subregional levels, as well as at the level of the United Nations. At the European level, a number of intergovernmental mechanisms and procedures have been established whose purpose, at least partially, is to promote in a peaceful way the rights of minorities and achieve constructive group accommodation. These mechanisms include the Council of the Baltic Sea States and its Commissioner on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities; the OSCE, with its Office of the High Commissioner on National Minorities; and the Council of Europe, which has adopted several instruments of relevance for minorities. In the United Nations, cooperation can take place through the Working Group on Minorities.

79. The treaty bodies, in particular CERD, the Human Rights Committee and the Committee on the Rights of the Child, can also play important roles in this regard. (See also below under article 9.)

Article 8

8.1 Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties

80. The Declaration does not replace or modify existing international obligations in favour of persons belonging to minorities. It is an addition to, not a substitute for, commitments already made.

8.2 The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms

81. The rights of specific categories of persons are supplementary to the universally recognized rights of every person. The Declaration is intended to strengthen the implementation of human rights in regard to persons belonging to minorities, but not to weaken for anyone the enjoyment of universal human rights. Consequently, the exercise of rights under the Declaration must not negatively affect the enjoyment of human rights for persons who do not belong to a minority, nor for persons who belong to the minority. In their efforts to preserve the collective identity of the minority, agencies of the minority concerned cannot on the basis of the Declaration adopt measures which interfere with the individual human rights of any person belonging to that minority.

8.3 Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights

82. In accordance with article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. Article 2 of the Universal Declaration provides that everyone is entitled to all the rights set out in that declaration without distinction of any kind such as race, language, religion or national origin. The question has been raised as to whether special measures in favour of national or ethnic, religious or linguistic minorities constitute a distinction in the enjoyment of human rights. The same question could be put with even greater emphasis with respect to the definition of racial discrimination contained in article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which reads: "The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." The question would then be whether special measures under the Declaration on Minorities, which would indeed be taken on the basis of "national or ethnic origin", would constitute a preference and therefore constitute impermissible discrimination.

83. Article 8.3 answers this question by pointing out that such measures shall not prima facie be considered to be contrary to the principle of equality. Under normal circumstances, measures to ensure effective participation, or to ensure that minorities benefit from economic progress in society or have the possibility to learn their own language will not be a privilege vis-à-vis other members of the society. It is essential, however, that such measures do not go beyond what is reasonable under the circumstances and are proportional to the aim sought to be realized.

8.4 Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States

84. As stated in the preamble, the Declaration is based on the principles of the Charter of the United Nations. Note should also be taken of the conviction expressed in the preamble that the promotion and protection of the rights of minorities contribute to the political and social stability of States. Article 8.4 serves as a reminder that nothing in the Declaration can be construed as permitting any activity which is contrary to the purposes of the Charter. Particular mention is made of activities that are contrary to the sovereign equality, territorial integrity and political independence of States. As pointed out above, the rights of persons belonging to minorities are different from the rights of peoples to self-determination, and minority rights cannot serve as a basis for claims of secession or dismemberment of a State.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence

85. Wherever possible, the agencies and bodies of the United Nations system shall contribute to the full realization of the Declaration. Projects of technical cooperation and assistance shall take the standards contained in the Declaration fully into account. The Working Group on Minorities established by the United Nations in July 1995 serves as a stimulus for such cooperation. This article should be seen in the light of the Charter of the United Nations (arts. 55-56), according to which the Organization shall promote respect and observance for human rights and fundamental freedoms. Promotion of the rights of persons belonging to minorities form part of that obligation. United Nations organs and specialized agencies should give special consideration to requests for technical cooperation and assistance that are designed to achieve the aims of this Declaration.

Notes

[1] E/CN.4/Sub.2/AC.5/1998/WP.1.

[2] E/CN.4/Sub.2/AC.5/1999/WP.1.

[3] E/CN.4/Sub.2/AC.5/2000/WP.1.

[4] The Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1994.

[5] Most important are the Helsinki Final Act of 1975 and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, 1990, section IV, paragraphs 30 to 40.

[6] Reference can here be made also to General Comment No. 23, adopted by the Human Rights Committee at its fiftieth session. It deals with article 27 of the International Covenant on Civil and Political Rights (the minority rights provision), and points out, in paragraph 3.1, the distinction between the right of peoples to self-determination and the rights of persons belonging to minorities, which are protected under article 27.

[7] Human Rights Committee, General Comment No. 23, adopted at the fiftieth session, 1994, paragraphs 6.1 and 6.2.

[8] Report of the CSE Meeting of Experts on National Minorities, Geneva, 19 July 1991, Part IV. Text in A. Bloed (Ed.), *The Conference on Security and Co-operation in Europe* (above, note 2),

pp. 593-604. See also the second progress report of Special Rapporteur A. Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1992/37), paragraphs 122-155.

[9] The Lund recommendations can be found on the Web site of the OSCE High Commissioner on National Minorities, http://www.osce.org/hcnm/documents/lund.htm.

[10] Report of the Working Group on Minorities on its fifth session (E/CN.4/Sub.2/1999/21), paragraphs 81-88.

[11] Universal Declaration of Human Rights, article 20; International Covenant on Civil and Political Rights, article 22.